IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 997 OF 2004

Gunaji Balu Mohte ... Appellant (Ori.Defendant)

V/s

Dhondu Bhagoji Kasare ... Respondent (Ori.Plaintiff)

Mr. S.M. Kazi for the appellant.

Mr. G.N. Salunke for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 4TH JULY, 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the Addl. District Judge, Khed dated 6.11.2003 dismissing his appeal and confirming the judgment and order passed by the Civil Judge, Jr.Divn., Dapoli, dated 30.3.2002 decreeing the suit for mandatory injunction against the defendant in order to remove the encroachment made by the defendant over the plaintiff's property and also to remove certain constructions, namely, gobar gas tank, etc.

2. I have heard the learned counsel for both parties.

Perused the record.

3. The plaintiff filed the suit for mandatory injunction to demolish the construction of plinth and a gobar gas tank and to recover possession of the suit land and for recovery of possession of the property bearing Survey No.13 Hissa No.15 and for giving direction to revenue authorities to remove the name of the defendant from the revenue record.

4. The plaintiff came with the suit that he is owner and in possession of the suit property of Survey No.13 Hissa No.15 since the time of his father and thereafter himself under the B.T. & A.L. Act and was in actual possession of the suit property. It was further alleged that the defendant had encroached upon the property and had constructed plinth and gobar gas tank and, therefore, suit for removal thereof came to be filed.

The defendant challenged the suit on various grounds including the ground that he had made such construction in the suit property by consent of the plaintiff. The learned Trial Judge adjudicated the dispute on merits and decreed the suit.

Appeal was preferred to the District Court, Khed. The Addl. District Judge, after hearing both parties, confirmed the findings recorded by the Trial Court and dismissed the appeal. Hence the present appeal.

5. At the outset, it may be noted that there is no substantial question of law involved in this appeal. The learned counsel for the appellant raised the only question to the effect that the plaintiff had alternative remedy under Sec.84 of the B.T. & A.L. Act which provides for summary eviction of any person unauthorisedly occupying or wrongfully in possession of any land. However, it must be noted that the said provision under the B.T. & A.L. Act has not taken away the right of plaintiff under the ordinary civil law in order to protect his property from the encroachment which in fact has been done in the present case. On perusal of the judgments of both the Courts below, it is seen that they have been properly dealt with taking into consideration the available evidence on record and, therefore, there is absolutely no reason as to why this Court should interfere in the said adjudications.

In the result, the appeal stands dismissed. Consequently, the Civil Application No.460 of 2004 also

stands dismissed with no order as to costs.

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